SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No.

THE FEDERAL LAND BANK OF ST. LOUIS, PETITIONER,

vs.

A. B. PRIDDY, JUDGE, ETC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

INDEX

	Original	Print
Proceedings in Supreme Court of Arkansas	1	1
Caption (omitted in printing)	1	
Petition for writ of prohibition	2	1
Record from Circuit Court of Pope County	6	4
Bill of complaint	6	4
Motion to quash service and dismiss suit	9	6
Exhibit "A"—Charter of Federal Land Bank of St. Louis	11	7
Order overruling motion to quash, etc.	12	8
Order of general attachment and summons	13	8
Sheriff's return	14	9
Certificate of levy of attachment	15	10
Affidavit for warning order	16	10
Affidavit and bond for attachment	17	11
Warning order	19	11
Answer of attorney ad litem	20	12
Cetificate of clerk (omitted in printing)	21	
Judgment	22	13
Opinion of court, Humphreys, J.	23	14
Motion for rehearing	27	16
Order overruling motion for rehearing	30	18
Clerk's certificate (omited in printing)	31	

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[fol. 1] [Caption omitted]

[File endorsement omitted.]

[fol. 2]

IN SUPREME COURT OF ARKANSAS

THE FEDERAL LAND BANK OF ST. LOUIS, Petitioner,

vs.

A. B. PRIDDY, Circuit Judge, Respondent,

in the Case of

S. M. BRISCOE, Plaintiff,

vs.

THE FEDERAL LAND BANK OF ST. LOUIS, a Corporation, Defendant

PETITION FOR WRIT OF PROHIBITION—Filed April 3, 1934

To the Honorable Chief Justice and Associate Justices of the Supreme Court:

On this day comes The Federal Land Bank of St. Louis, a corporation, defendant in the above styled cause, petitioner herein, and respectfully states to the Court that the plaintiff herein instituted suit against this petitioner in the Circuit Court of Pope County, Arkansas, on or about the 6th day of January, 1934, in which petition the plaintiff alleges this petitioner to be justly indebted unto him in the sum of Three Hundred Dollars ($300.00) and prays for personal judgment against petitioner for said sum, together with interest thereon and for costs of suit.

This petitioner further states that the plaintiff also alleges in his petition:

"That the defendant is a non-resident banking corporation organized under and by virtue of an Act of Congress of the United States, approved July 17th, 1916, operating within a district composed of the states of Missouri, Illinois and Arkansas, with its domicile and principal place

of business in the city of St. Louis, in the State of Missouri.

"That the defendant engages in the business of lending money on real estate throughout its district, and has lent [fol. 3] large amounts in Pope County, Arkansas, and through foreclosure proceedings in the courts of said county has acquired a number of farms in Pope County, Arkansas, and is now the owner of same and is renting said lands and collecting the rents on same and transacting other business connected with said farms through E. D. Allmon, of Russellville, Arkansas.

"That the officers of defendant do not reside in the State of Arkansas, and that defendant has no branch office in this state, neither has it designated an agent in this state upon whom service of summons may be had."

This petitioner further states that the plaintiff attempted to obtain service upon it by publication of warning order and by writ or order of general attachment and summons issued by the Clerk of said Court and delivered to the Sheriff of Pope County, Arkansas, who on January 6, 1934, attempted to serve same by levying upon the property described in plaintiff's petition and by delivering copy of same to E. D. Allmon, according to the endorsement made on the writ by the Sheriff of said County.

This petitioner further states that it did on the 19th day of February, 1934, enter its special and limited appearance in said cause by filing motion to quash service, to dismiss suit and dissolve attachment for lack of jurisdiction of the Court and for reasons therefor, stated:

First. That it is a national corporation organized and existing under and by virtue of an Act of Congress of the United States approved July 17, 1916; that by the terms of its charter it is authorized to do business in Missouri, Illinois and Arkansas, and that its principal office is located in the City of St. Louis, in the State of Missouri.

[fol. 4] Second. That as a national corporation it is not required to comply with the laws of the State of Arkansas pertaining to foreign or domestic corporations and is not required to receive authority from the State of Arkansas as a condition precedent to doing business thereon.

Third. That the property of this defendant situated in the State of Arkansas is not subject to attachment in this

cause and that the service of process by publication of warning order and order of general attachment and summons is not legal and proper service upon it.

This petitioner further states that its motion was submitted and heard by the Honorable A. B. Priddy, the duly elected, qualified and acting Judge of the Circuit Court of Pope County, Arkansas, on the 2 day of April, 1934, which was the first day of the April, 1934, term of the Pope County Circuit Court, and that said Court entered judgment in said cause, overruling petitioner's motion and directing that said cause be submitted for trial on the — day of ——, 1934.

This petitioner further states that it is a national corporation, organized and existing under and by virtue of an Act of Congress of the United States, approved July 17, 1916, and is not required to comply with the laws of the statutes of Arkansas pertaining to domestic or foreign corporations before it is legally authorized and entitled to do business therein, and that said Court did not acquire jurisdiction in said cause and exceeded its authority in assuming jurisdiction and rendering judgment, overruling petitioner's motion to quash service and dismiss suit.

And this petitioner herewith exhibits to this Court certified copy of the record and proceedings had in said Court [fol. 5] in said cause under the hand and seal of the duly elected, qualified and acting Clerk of said court in the establishment of the matter stated in this petition, said copy being marked Exhibit "A" and made a part hereof.

Wherefore, this petitioner implores the aid of this Court and prays that the Clerk of this Court be authorized and directed to issue writ of prohibition directed to the Honorable A. B. Priddy, Judge of the Circuit Court of Pope County, Arkansas, to prohibit him from exercising jurisdiction in said cause and to prohibit him from in any manner enforcing said judgment or taking any steps whatever in said cause; and prohibiting him, the said Judge, from making or entering any order, judgment or decree in or about said cause; and generally from the further exercise of jurisdiction in said cause or the enforcing of any order, judgment or decree made under color thereof.

The Federal Land Bank of St. Louis, a Corporation,
by J. R. Crocker, Counsel.

I, C. C. Wait, attorney for the plaintiff hereby waive notice of application for a writ of prohibition and agree that same may be filed without further notice.

C. C. Wait, Attorney for Plaintiff.

[fol. 6] EXHIBIT "A" TO PETITION FOR WRIT OF PROHIBITION

IN CIRCUIT COURT OF POPE COUNTY, ARKANSAS

S. M. BRISCOE, Plaintiff,

vs.

THE FEDERAL LAND BANK OF ST. LOUIS, MISSOURI, Defendant

COMPLAINT AT LAW

Comes the plaintiff and complains of the defendant, and for cause of action states:

That the plaintiff is a real estate broker licensed to operate as such under the laws of the State of Arkansas, and is engaged in the business of negotiating sales of land.

That the defendant is a non-fesident banking corporation organized under and by virtue of an Act of Congress of the United States, approved July 17, 1916, operating within a district composed of the states of Missouri, Illinois and Arkansas, with its domicile and principal place of business in the city of St. Louis, in the State of Missouri.

That the defendant engages in the business of lending money on real estate throughout its district, and has lent large amounts in Pope County, Arkansas, and through foreclosure proceedings in the courts of said county has acquired a number of farms in Pope County, Arkansas, and is now the owner of same and is renting said lands and collecting the rents on same and transacting other business connected with said farms through E. D. Allmon, of Russellville, Arkansas.

That the officers of defendant do not reside in the State of Arkansas, and that defendant has no branch office in this state, neither has it designated an agent in this state upon whom service of summons may be had.

That the defendant employed this plaintiff to procure purchasers for certain tracts of land owned by the defend-

ant in this part of Arkansas, and agreed to pay plaintiff [fol. 7] a commission of 5% upon the purchase price agreed upon between defendant and any purchaser or purchasers that plaintiff might procure for it.

That acting under said agreement this plaintiff secured purchasers for a number of tracts of land belonging to the defendant, with whom defendant entered into a contract of sale, and paid to this plaintiff the commission agreed upon.

That among the lands for which plaintiff was authorized to procure a purchaser was a certain tract of land belonging to the defendant consisting of 199.98 acres, known as the J. Frank Miller farm or the L. M. Lynch farm in Yell County, Arkansas.

That acting under the directions of the defendant, and in pursuance of this contract with the defendant, plaintiff procured for the defendant a purchaser for said lands who was able, willing and ready to purchase said lands, and that said purchaser entered into a written contract to purchase said lands, at and for an agreed price of Six Thousand ($6,000.00) Dollars, and made a down payment of Five Hundred ($500.00) Dollars, which contract and down payment was accepted by the defendant, and a duplicate copy of said contract duly signed by the defendant was returned to the purchaser. That the original and copy of said contract is now in the hands of the defendant and defendant's purchaser and is not accessible to this plaintiff.

That sometime after the execution of said written contract and the acceptance of the down payment of Five Hundred Dollars, the defendant, for some reason unknown to this plaintiff, refused to carry out its contract of sale to the purchaser, and returned to the purchaser the $500.00 paid by him, and has continued to refuse to carry out its agreement to sell said lands.

[fol. 8] That in procuring said purchaser who was ready, able and willing to carry out said contract of sale, this plaintiff has done all that was required of him under his contract with the defendant, and is entitled to his commission of 5% upon the sale price of Six Thousand Dollars, or to a commission of Three Hundred ($300.00) Dollars.

That due demand has been made upon the defendant for the payment of said commission of Three Hundred Dollars by the plaintiff and payment has been refused.

That among the several hundred acres of farm lands owned by the defendant in Pope County is the following described lands, to-wit: The South half of the Northwest quarter of the Northeast quarter, and the Southwest quarter of the Northeast quarter of Section five (5), Township eight (8) North, Range Twenty (20) West, containing Sixty (60) acres, more or less.

That the above described lands are not essential to the operation of the business of defendant but were taken over for a debt due defendant and are being held by defendant for the purpose of resale.

Wherefore, plaintiff prays that an attachment be issued by the Clerk of this Court and levied upon the above described lands, and that summons or warning order be issued as provided by law, and that upon a final hearing of this cause that plaintiff be given judgment for the sum of Three Hundred ($300.00) Dollars, and that the attachment against the above described lands be sustained, and that said lands be sold for the satisfaction of said judgment, interest and costs of this proceeding.

C. C. Wait, Attorney for Plaintiff.

[fol. 9] IN CIRCUIT COURT OF POPE COUNTY

[Title omitted]

MOTION TO QUASH SERVICE AND DISMISS SUIT

Comes the Federal Land Bank of St. Louis, the defendant herein, and appears specially for the purpose of this motion and none other, and moves the Court to dismiss this suit for lack of jurisdiction, and for reasons therefor states:

First. That it is a national corporation organized and existing under and by virtue of an Act of Congress of the United States approved July 17, 1916; that by the terms of its charter it is authorized to do business in Missouri, Illinois and Arkansas, and that its principal office is located in the City of St. Louis, in the State of Missouri. A certified copy of defendant's charter is attached hereto, marked Exhibit "A", and made a part hereof.

Second. That as a national corporation it is not required to comply with the laws of the State of Arkansas pertaining to foreign or domestic corporations and is not required to receive authority from the State of Arkansas as a condition precedent to doing business therein.

Third. That the property of this defendant situated in the State of Arkansas is not subject to attachment because it is an instrumentality of the Government of the United States, and that the service of process by publication of warning order and order of general attachment and summons is not legal and proper service upon it.

Wherefore, this defendant prays that the service had upon it by publication of warning order and summons by order of general attachment be quashed, the suit dismissed, [fol. 10] and attachment dissolved.

J. E. Crocker, Attorney for Defendant.

[fol. 11] EXHIBIT "A" TO MOTION TO QUASH, ETC.

(Copy)

The Federal Land Bank of St. Louis

Number 6

Office of the Federal Farm Loan Board

Washington, D. C., March 8th, 1917.

Whereas, The Federal Land Bank of St. Louis, of the City of St. Louis, State of Missouri, and in the Sixth Federal Land Bank district, has filed with the Farm Loan Commissioner, its Organization Certificate as required by law, and done and performed all things required by law to be done before completing its organization;

Now therefore, The Federal Farm Loan Board does hereby grant this Charter to The Federal Land Bank of St. Louis, and said The Federal Land Bank of St. Louis is hereby authorized and empowered to do and perform all acts, and transact all business which may be legally done, performed and transacted by a Federal Land Bank, under and in accordance with the provisions of the Act of Con-

gress, approved July 17, 1916, known as "The Federal Farm Loan Act," and to do all other things implied and incident thereto, within the states of Illinois, Missouri and Arkansas.

In witness whereof, The Federal Farm Loan Board has caused this charter to be signed by its executive officer, Farm Loan Commissioner, attested by its Secretary, and has caused its seal to be hereunto affixed this eighth day of March, 1917.

Federal Farm Loan Board, by (Signed) Geo. W. Norris, Farm Loan Commissioner. Attest: (Signed) W. W. Flannagan, Secretary. (Seal.)

[fol. 12] IN CIRCUIT COURT OF POPE COUNTY

[Title omitted]

ORDER OVERRULING DEFENDANT'S MOTION TO QUASH, ETC.

On this 2nd day of April, 1934, the same being the first day of the April, 1934, term of the Pope County Circuit Court, comes the plaintiff by his solicitor, C. C. Wait, and comes the defendant by its solicitor, J. R. Crocker, and is submitted to the Court the motion of the defendant to quash service, dismiss suit and dissolve attachment had in said cause.

And the court, after hearing argument of counsel and being well and sufficiently advised in the premises doth overrule defendant's motion.

A. B. Priddy, Judge.

[fol. 13] IN CIRCUIT COURT OF POPE COUNTY

[Title omitted]

ORDER OF GENERAL ATTACHMENT AND SUMMONS—Filed Jan. 8, 1934

The State of Arkansas, to the Sheriff of Pope County, Greeting:

You are commanded to attach and safely keep the property of the defendant, The Federal Land Bank of St. Louis,

Missouri, described as: The South Half of the Northwest Quarter of Section Five (5), Township Eight (8) North, Range Twenty (20) West, in Pope County, Arkansas, containing Sixty (60) acres, more or less, in your county, not exempt from execution, or so much thereof as will satisfy the claim of S. M. Briscoe, the plaintiff in this action, for Three Hundred and no/100 ($300.00) Dollars (*$300.00*), and cost of this proceeding; not exceeding Thirty and no/100 Dollars ($30.00), for the cost thereof; and you are also commanded to summon the said The Federal Land Bank of St. Louis, Missouri, to answer on the first day of the next April Term of this Court the complaint filed thereon against it by said S. M. Briscoe, and also to summon and — such other persons as the plaintiff may suggest, as garnishees, to answer to this action on the first day of the said term; and you will make due return of this order on that day.

Witness my hand and seal of said court this 6th day of January, 1934.

Jim Tucker, Clerk. (Seal.)

On reverse side appears the following:

[fol. 14] [Title omitted]

SHERIFF'S RETURN

STATE OF ARKANSAS,
County of Pope, ss:

I have this 6th day of January, A. D. 1934, duly served the within by levying same upon the S½ NW¼ NE¼ and SW¼ of NE¼, Section 5, Township 8 North, Range 20 West, in Pope County, Arkansas, containing 60 acres, more or less, by delivering a true copy of — to the tenant living on said premises and by delivering a copy of same to E. D. Allmon, the party in charge of renting said premises.

J. L. Bell, Sheriff, by Cecil McCarley, D. S.

Service, $1.50.
Mileage, 1.60.
Return, .20.

[File endorsement omitted.]

[fol. 15] IN CIRCUIT COURT OF POPE COUNTY

[Title omitted]

CERTIFICATE OF LEVY OF ATTACHMENT

Notice is hereby given that I, J. L. Bell, Sheriff of Pope County, Arkansas, do hereby certify that a writ of attachment in the above styled cause came to my hands on the 8th day of January, 1934, at 1:30 P. M. and that the same was by me on the said 8th day of January, 1934, duly levied upon the following described lands, in Pope County, Arkansas, to-wit:

The South Half of the Northwest Quarter of the Northeast Quarter, and the Southwest Quarter of the Northeast Quarter of Section Five (5), Township Eight (8) North, Range Twenty (20) West, containing Sixty (60) acres, more or less.

That said levy of attachment was made by me on the said 8th day of January, 1934, between the hours of 9 A. M. and 3 P. M. of said day and that due return of said writ was made by me to the Circuit Clerk of Pope County, Arkansas.

In witness whereof I have hereunto set my hand on this the 14th day of January, 1934.

J. L. Bell, Sheriff of Pope County, by Cecil McCarley, D. S.

[fol. 16] IN CIRCUIT COURT OF POPE COUNTY

[Title omitted]

AFFIDAVIT FOR WARNING ORDER

The plaintiff, S. M. Briscoe, states that the defendant, The Federal Land Bank of St. Louis, Missouri, is a corporation and a non-resident of the State of Arkansas, and that it maintains no branch office in said state and has not designated an agent upon whom service of summons may be had.

S. M. Briscoe, Plaintiff.

Subscribed and sworn to before me a Circuit Clerk on this the 6th day of January, 1934. Jim Tucker, Circuit Clerk. (Seal.)

[fol. 17] IN CIRCUIT COURT OF POPE COUNTY

[Title omitted]

Affidavit and Bond for Attachment

AFFIDAVIT

I, S. M. Briscoe, state that the claim in this action against the said defendant is for money due upon contract, as set forth in the foregoing complaint, which I believe to be true; that it is a just claim, and that I believe the plaintiff ought to recover thereon Three Hundred and no/100 ($300.00) Dollars, and that said defendant, Federal Land Bank of St. Louis, Missouri, is a foreign or non-resident corporation, and that it has designated no agent in the State of Arkansas upon whom service of summons can be had, and maintains no branch office in the State of Arkansas.

S. M. Brisoce.

Sworn to and subscribed before me, this — day of January, 1934. Jim Tucker.

[Title omitted]

BOND

We undertake that the Plaintiff shall pay to said Defendant all damages which it may sustain by reason of the attachment in this action if the order therefor is wrongfully obtained.

[fol. 18] S. M. Briscoe, Joe F. Willard, W. A. Price.

Attest Jan. 6, 1934, Jim Tucker, Clerk.

[fol. 19] IN CIRCUIT COURT OF POPE COUNTY

[Title omitted]

WARNING ORDER

Whereas, on the 6th day of January, 1934, a writ of attachment in the above styled cause was issued out of this court and levied upon

The South Half of the Northwest Quarter of the Northeast Quarter, and the Southwest Quarter of the Northeast

Quarter of Section Five (5) in Township Eight (8) North, Range Twenty (20) West, in Pope County, Arkansas, and containing 60 acres, more or less,

as shown by the return on said writ, same being levied upon as the property of the defendant to satisfy the claim of the plaintiff in the sum of Three Hundred and no/100 ($300.00) Dollars, and the cost of this proceeding.

Now, therefore, the defendant, The Federal Land Bank of St. Louis, is hereby warned to appear in this court on the first day of its next April term, 1934, and answer to the complaint of the plaintiff, S. M. Briscoe.

Witness my hand and seal as such Clerk on this the 8th day of January, 1934.

Jim Tucker, Clerk.

C. C. Wait, Attorney for Plaintiff.
Joe D. Shepherd, Attorney for non-resident Defendant.

[fol. 20] IN CIRCUIT COURT OF POPE COUNTY

[Title omitted]

ANSWER OF ATTORNEY AD LITEM

Comes Joe D. Shepherd, a regular practicing attorney of this bar, heretofore on the 8th day of January, 1934, appointed by this court as attorney ad litem to represent the defendant Federal Land Bank of St. Louis, reports as follows:

That immediately upon receiving my appointment, I wrote to J. R. Crocker attorney for the defendant, at St. Louis, Mo., informing him of the pendency of the action and inquired if he desired me to file any pleadings in the case. He replied to my letter and informed me that he would look after the matter and file such pleadings as he might think necessary.

As I know of no defense that can be interposed to the action, I ask that plaintiff be held to strict proof of each and every allegation of his complaint.

Respectfully submitted, Joe D. Shepherd, Attorney ad litem.

[fol. 21] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 22] IN SUPREME COURT OF ARKANSAS

May Term, 1934

3515

Prohibition to Pope Circuit Court

THE FEDERAL LAND BANK OF SAINT LOUIS, MISSOURI, Petitioner,

v.

A. B. PRIDDY, JUDGE, Respondent

JUDGMENT—June 18, 1934

This cause came on to be heard upon the petition and response, and was argued by counsel, on consideration whereof it is the opinion of the Court that under the Act of Congress under which the petitioner was organized, said petitioner may be sued in a proper action in the courts of this state wherever service can be had upon it either actually or constructively, and that the constructive service upon it in this case confers jurisdiction upon the circuit court of Pope county to proceed with the trial and decision of the attachment suit instituted against it in said county by the plaintiff, S. M. Briscoe.

It is therefore considered by the Court that the petition for prohibition herein be, and the same is hereby denied, and said petition is dismissed.

Opinion by Humphreys, J.; Smith and Mehaffy, JJ., concur; McHaney and Butler, JJ., dissent.

[fol. 23] IN SUPREME COURT OF ARKANSAS

No. 28

THE FEDERAL LAND BANK OF ST. LOUIS

v.

PRIDDY, JUDGE

OPINION—June 18, 1934

HUMPHREYS, J.:

This is an application to this court for a writ of prohibition to prevent the Circuit Court of Pope County, Arkansas, from proceeding with the trial of the case of S. M. Briscoe v. The Federal Land Bank of St. Louis, a corporation, upon constructive service. Constructive service was obtained under the provisions of our statute (Crawford & Moses' Digest, Secs. 1159-1160) by suing out a general writ of attachment on the ground that The Federal Land Bank of St. Louis was a foreign corporation and by levying same upon land in Pope County belonging to said corporation and duly publishing a warning order notifying said corporation to appear in said court and defend the action.

The petitioner herein appeared in response to the warning order for the sole purpose of contesting the service and filed an unverified motion to quash the service on the grounds: first, that it was not a foreign corporation; and, second, that its property in the State of Arkansas is not subject to attachment because said corporation is an instrumentality of the Government of the United States.

The motion was overruled, and this application for a writ of prohibition followed.

The basis of this suit was a claim for a commission of $300 alleged to have been earned by a duly licensed real estate broker for the sale of a farm valued at $6,000, acquired by The Federal Land Bank of St. Louis, Missouri, through foreclosure proceedings to enforce the collection of money it had loaned.

[fol. 24] Personal service could not be obtained because The Federal Land Bank of St. Louis, Missouri, had not and was not required to maintain a branch office in the State of Arkansas nor to designate an agent in the State

of Arkansas upon whom service of summons may be had before it could do business in the state.

The banking corporation was organized under the provisions of an Act of Congress of the United States, approved July 17, 1916, for the purpose of lending money upon mortgage securities in the States of Missouri, Illinois and Arkansas, with its domicile or its principal place of business in the City of St. Louis, Missouri.

The Act authorizing the creation or organization of the corporation provides, in paragraph 6 of Section 4, that such banking corporations, when organized, may "sue or be sued, complain, interplead, and defend in any court of law, or equity, as fully as natural persons.

(1) The first contention of petitioners in support of their request for a writ of prohibition is that The Federal Land Bank of St. Louis cannot be sued anywhere except in a court of competent jurisdiction within the territorial limits of its domicile in St. Louis, Missouri. This contention is without merit as the Act of Congress authorizing the creation of said banking corporation provides in the plainest language that it may be sued in any court of law or equity as a natural person may be. This section can have no other meaning except that the corporation may be sued wherever service can be obtained upon it, actually or constructively. However, petitioner argues that the constructive service in the instant case was insufficient because the basis of the service rests upon the allegation that it is a foreign corporation; whereas, it was not made a foreign [fol. 25] corporation with respect to Arkansas by the Act of Congress authorizing its creation. Authorities are cited by petitioner tending to support the theory that it is a domestic corporation of the United States and consequently a domestic corporation or resident of the State of Arkansas, as Arkansas is a part of the United States. These authorities are not in point because they do not take into consideration our statutes defining foreign corporations. Foreign corporations, in contemplation of law in this State, are defined by statutes in the following language:

"A foreign corporation is one created by the laws of some other state or country." Sec. 9743 of Crawford & Moses' Digest.

"The words 'other country' signify any part of the world out of this State." Sec. 9744 of Crawford & Moses' Digest.

In 14a C. J., 1214, Sec. 2934, in discussing the subject of whether a Federal corporation is foreign in states, it is said:

"Under statutes defining a foreign corporation as one created under the laws of any other state, government or country, a Federal corporation has been held to be a foreign corporation with respect to a state."

We are of opinion that The Federal Land Bank of St. Louis, Missouri is a foreign corporation and that the constructive service was sufficient.

(2) The second contention of petitioner in support of its request for a writ of prohibition is that the Federal Land Bank of St. Louis, Missouri, is an instrumentality of the Government of the United States and that on that account its property is not subject to attachment. In the Act authorizing the creation of said banking corporation, there is no limitation or restriction against reaching its property by attachment. We know of no law preventing levy by attachment against the property of corporations created [fol. 26] by act of Congress except preventing attachment against the property of National banks before judgment is obtained against them. Van Reed v. Peoples National Bank, 198 U. S. 554. If Congress had intended that the property of The Federal Land Banks should not be subject to attachment, it would have prohibited same in the Act. We think the case of The State of Missouri ex rel. St. Louis, Brownsville & Mexico Ry. Co. v. Taylor, Judge of the Circuit Court of the City of St. Louis, 266 U. S. 200, announces principles applicable to the case in hand.

The writ is, therefore, denied.

McHaney and Butler, JJ., dissent.
Smith and Mehaffy, JJ., concur.

[fol. 27] IN SUPREME COURT OF ARKANSAS

[Title omitted]

MOTION FOR REHEARING

Now comes The Federal Land Bank of St. Louis, a corporation, petitioner herein, by its attorneys, and respect-

fully prays that a rehearing be granted in the above entitled cause on the grounds and for the following reasons, to-wit:

1. That this Court in the course of its opinion inadvertently overlooked the fact that the respondent attempted to sue out a specific attachment against property belonging to petitioner, which remedy was not available to respondent except to enforce a specific lien against the property sought to be attached; and inasmuch as the respondent had no lien or claim against the property the attachment falls.

Reference: Page 33 of petitioner's brief.

2. That this Court inadvertently based its finding that the property of petitioner may be attached regardless of the fact that it may be an instrumentality of the Government of the United States upon the language of paragraph 6, Section 4 of the Act of Congress providing for the creation of the Federal Land Banks, which section provides that it "may sue or be sued, complain, interplead and defend in any Court of law or equity," etc., and on the definition of the term "foreign corporation" as fixed by the General Assembly of the State of Arkansas, evidently overlooking the general law of the State of Arkansas and decisions of the United States Supreme Court in conflict with such holding.

Reference: Page 29 of petitioner's brief.

3. This Court held in its opinion that the basis of the suit was a claim for commission of Three Hundred Dollars [fol. 28] ($300.00) alleged to have been earned by a duly licensed, real estate broker for the sale of the farm acquired by the petitioner through foreclosure proceedings. The petitioner has not acquired title to the property through foreclosure proceedings or otherwise.

4. This Court in its opinion inadvertently failed to make a direct finding on the question as to whether the petitioner is an instrumentality of the Government of the United States, although it indicated such to be the case—if it is in fact such an instrumentality, then the Court overlooked its previous opinions involving the question of the right of garnishment or attachment of property held by instrumentalities of the State. If the petitioner is in fact an instrumentality of the Government of the United States, then its property wherever situated is not subject to attachment before judgment.

Reference:

Goyer Co. v. Williamson, 107 Ark. 189.
Sallie v. Bank of Corning, 135 Ark. 109.
Bull v. Zeigler, 186 Ark. 477.
State ex rel. Ark. Const. Com. v. Toler, Judge. Opinion delivered March 19, 1934.
And other cases cited on pages 31 and 32 of plaintiff's brief.

In view of the fact that this Court has apparently overlooked the matters hereinbefore mentioned, petitioner prays that a rehearing be granted and that on such rehearing the application of petitioner for writ of prohibition be granted.

Respectfully submitted, Guy V. Head, J. R. Crocker, L. F. Reeder, Attorneys for Petitioner.

[fol. 29] *Duly sworn to by J. R. Crocker. Jurat omitted in printing.*

[fol. 30] IN SUPREME COURT OF ARKANSAS

ORDER OVERRULING MOTION FOR REHEARING—September 24, 1934

Rehearing Petitions Denied

Being fully advised, the petitions for rehearing in the following causes are by the Court severally overruled, viz:

* * * * * * *

The Federal Land Bank of St. Louis v. A. B. Priddy, Judge.

* * * * * * *

[fol. 31] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 32] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 4, 1935

The petition herein for a writ of certiorari to the Supreme Court of the State of Arkansas is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.